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United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual employer-members (See Appendix A) and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO.

Eaton Electric, Inc., Raymour Electrical Co.,* Schneider Electric Co., Star Brite Electric Co., Blake Electrical Contracting, Inc., J.K. Electric Corp., T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Mondl Electric Co., Inc., Paul Mock, Inc., Star Electric Corp. and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO. Cases 29-CA-18784, 29-CA-21456-5, 29-CA-21456-14, 29-CA-21456-15, 29-CA-21456-17, 29-CA-21456-27, 29-CA-21456-43, 29-CA-21456-48/49, 29-CA-21456-50, 29-CA-21456-57, and 29-CA-21456-64

May 15, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On September 7, 2001, Administrative Law Judge Steven Davis issued the attached decision. Respondent United Electrical Contractors Association (UECA), Respondent Expert Electric, Inc. (Expert), Respondent Positive Electric Association, Inc. (Positive), and the General Counsel each filed exceptions to the judge's decision. Respondents UECA and Expert filed supporting briefs, and Respondent UECA filed a brief in answer to the General Counsel's exceptions.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions as

* We have amended the caption to reflect the correct spelling of this Respondent's name.

¹ UECA's exceptions and briefs were filed on its own behalf and on behalf of certain of its employer-members.

² The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

modified herein and to adopt the recommended Order as modified and set forth in full below.³

The Respondents herein are a multiemployer association (UECA) and 50 of its employer-members.⁴ The judge found that the Respondents failed to provide and delayed in providing necessary and relevant information requested by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union), in violation of Section 8(a)(5). In so finding, the judge rejected the Respondents' procedural defenses to the 8(a)(5) allegations in Case 29-CA-18784. The judge further recommended a 12-month remedial extension of the certification year pursuant to *Mar-Jac Poultry*, supra. The Respondents except to the judge's unfair labor practice findings,⁵ as well as his findings with regard to the Respondents' procedural defenses and his imposition of a *Mar-Jac* remedy. For the reasons explained by the judge, except as modified below, we affirm the judge's unfair labor practice findings and his rejection of the Respondents' procedural defenses. However, as explained below, we do not find that a *Mar-Jac* remedy is appropriate in the circumstances presented here.

1. The Respondents argued, both to the judge and in earlier motions to dismiss and for summary judgment, that the complaint in Case 29-CA-18784 should be dismissed as against the individual employer-members of UECA because they were not served with the underlying charge within the 6-month limitations period set forth in Section 10(b) of the Act. The judge agreed with the Respondents that the evidence did not reflect service of the

³ We amend the judge's remedy to reflect our finding, explained below, that a remedial extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962), is unwarranted in this case. We have modified the judge's recommended Order to conform to the amended remedy and our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997), to more accurately reflect the violations alleged and found, and to require posting of the notice at UECA's most recent location in Holbrook, New York. Finally, we have substituted new notices to comport with these modifications and with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enf'd. 354 F.3d 534 (6th Cir. 2004).

⁴ Forty-nine employer-members of UECA are named as Respondents in Case 29-CA-18784. See appendix A. Nine of these 49 are also named as Respondents in the remaining consolidated cases, along with 1 additional employer-member of UECA (Blake Electrical Contracting, Inc.).

⁵ However, there are no exceptions to the judge's finding, in Case 29-CA-18784, that UECA unlawfully failed to provide any information on behalf of Respondents DiFrancia Electric, Inc., Farica Electric Contracting Corp., G & R Electrical Contracting, Inc., Lesil Reliable Electric Co., Inc., Lisa Electric a/k/a YNR Electric, Maximum Electrical Contracting, Inc., Milad Contracting Corp., T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Mondl Electric Co., Inc., Norlin Electrical Contracting Co., Pantel Contracting Corp., T & A Electrical Contracting, Tri-Town Electric Corp., and W. T. Hickey Corp.

charge on the employer-members of UECA.⁶ However, he found that Section 10(b) was nonetheless satisfied by service of the complaint on all of the Respondents, including the named employer-members of UECA, within the 10(b) period. The Respondents except, arguing that the complaint was not served on all of the Respondent employer-members of UECA and that, even if the complaint was so served, it failed to put them on notice that the complaint allegations were being asserted against them and not solely against UECA.⁷ The General Counsel, for his part, excepts to the judge's finding that the evidence did not establish service of the charge. For the reasons explained below, we affirm the judge's finding that Section 10(b) does not bar the complaint against the individual employer-members of UECA.

In December 1994, the Union filed a charge in Case 29-CA-18784 alleging that, from on or about September 21, 1994 through the date of the filing of the charge, "UECA and its 91 employer members" had unlawfully failed to provide certain information requested by the Union in violation of Section 8(a)(5). As UECA acknowledges in its brief, the charge named as the charged employer UECA and, via an appendix to the charge, 91 employer-members of UECA. The record evidence reflects that, on January 13, 1995, the charge was served by certified mail on Tap Electrical Contracting, whose offices were also the offices of UECA.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ." The Board has interpreted this language to require "personal service [of the charge] upon the person charged or his agent." *Sewanee Coal Operators Assn.*, 167 NLRB 172, 177 (1967). The charge at issue here, naming each of the employer-members of UECA, was served on their multiemployer bargaining agent less than 4 months after the alleged unfair labor practice occurred—well within the 10(b) period. We find that this timely service on UECA

constituted timely service on its employer-members also.⁸

Under agency law as well as the Federal Rules of Civil Procedure, service of process on an authorized agent constitutes effective service on the agent's principal. Restatement (Second) of Agency §268 (1958); Fed.R.Civ.P. 4(h)(1). Authorization to accept service on behalf of a principal may be implied from the surrounding circumstances. See *Focus Media, Inc. v. Pringle*, 387 F.3d 1077, 1081–1083 (9th Cir. 2004). Also, under traditional rules of agency law, an agent is deemed to have authority to perform acts incidental to those expressly authorized by the principal. Restatement (Second) of Agency §35. Here, UECA had implied authority to accept service of the charge on behalf of its members because the allegations in the charge directly related to UECA's expressly authorized activities as the employer-members' bargaining agent. We accordingly find that in accepting service of the charge within the 10(b) period, UECA did so not only for itself but also for its employer-members named in the charge.⁹ We accordingly affirm the judge's finding that Section 10(b) does not bar the complaint against the individual employer-members of UECA named therein.¹⁰

⁸ Member Schaumber finds it unnecessary to reach the issue of whether service on a multiemployer bargaining agent constitutes service on its employer-members, as he finds that the record shows that each of the employer-members is properly a respondent. The General Counsel provided evidence that the charge was served on all employer-members except Farica Electric Contracting Corp. and Maximum Electrical Contracting Corp. The failure of service of the charge was cured, with respect to Maximum Electrical Contracting Corp., by service of the complaint within the 10(b) period. Although Farica Electric Contracting Corp. was not properly served, it acknowledged by letter in October 2000 that it was a member of UECA and was bound by the certification.

⁹ In finding that UECA could accept service of the charge on behalf of its employer-members, we emphasize that those employer-members were named in the charge served on UECA. That fact distinguishes this case from *Expert Electric, Inc.*, 347 NLRB No. 2 (2006), which we also issue today. In that case, we found that service of a charge on UECA did not constitute effective service on UECA's employer-members because the charge did not name the employer-members as charged parties. Thus, UECA's authority to accept service of the charge on behalf of its members simply was not invoked in *Expert Electric* because the charge served on UECA named UECA alone.

¹⁰ Member Walsh would find that the 10(b) defense as applied to two of UECA's employer-members, Farica Electric and Maximum Electrical, fails for an additional reason. The 10(b) statute of limitations is an affirmative defense, which is deemed waived if not timely raised. *Paul Mueller Co.*, 337 NLRB 764, 764 (2002). Neither Farica Electric nor Maximum Electrical timely asserted its 10(b) defense by raising it either in an answer to the amended complaint or at the hearing. Furthermore, they are not among the employer-members represented by UECA in this proceeding and therefore cannot benefit by UECA's timely assertion of the 10(b) defense. Accordingly, Member Walsh would find that Farica Electric and Maximum Electrical have waived their 10(b) defense.

⁶ The General Counsel excepted to this finding, arguing that all of UECA's employer-members were served with the charge. Certified mail return receipts in the record reflect that the charge was served in January 1995 on all of the individual employer-Respondents before the Board in this case, except for two: Farica Electric Contracting Corp. and Maximum Electrical Contracting Corp.

⁷ Although the caption of the original complaint in Case 29-CA-18784 named UECA "and its individual employer-members" as respondents, the body of the complaint alleged unfair labor practices solely against UECA as "the Respondent."

2. The Respondents argued to the judge that the complaint against the employer-members of UECA in Case 29-CA-18784 should be barred under the doctrine of laches. In making this argument, the Respondents relied on the fact that the General Counsel did not specifically name any employer-members of UECA as respondents in this case until nearly 5-1/2 years after the complaint first issued. The judge rejected the Respondents' laches defense, noting that the doctrine of laches is generally inapplicable to Board proceedings and finding, at any rate, that the Respondents had not shown that they were prejudiced by the General Counsel's lack of diligence. The Respondents except. Although we agree with the Respondents that the General Counsel's delay was inordinate and inexcusable, for the reasons stated by the judge, we nevertheless agree with his finding that the Respondents were not prejudiced thereby. As the judge observed, several parties possessed evidence as to what information had been furnished to the Union. Further, the Respondents have not claimed this delay has resulted in the spoliation of evidence or has hampered their defense in any way. Thus, we adopt the judge's finding that the complaint is not barred under the doctrine of laches. See *Roofing, Metal & Heating Associates*, 304 NLRB 155, 160 (1991).

3. Respondent Positive excepts to the finding that it unlawfully failed to provide information, through UECA, in Case 29-CA-18784. Positive maintains that UECA lacked authority to furnish information on its behalf because Positive had entered into an interim agreement with the Union. Positive does not dispute that the Union's September 21, 1994 information request asked for information concerning the employees of each of UECA's 91 employer-members. Positive also does not dispute that it was listed as one of those 91 employer-members at the time the Board certified the Union as the collective-bargaining representative of a multiemployer unit of employees employed by UECA's members. It does not contend that the nature of its interim agreement with the Union was such as to fragment the multiemployer unit. Neither does it contend that it ever withdrew from the multiemployer unit, either before multiemployer bargaining began or, under unusual circumstances, after the commencement of bargaining. See *Retail Associates, Inc.*, 120 NLRB 388, 395 (1958). Accordingly, we see no basis upon which to release Positive from liability in this case.

4. The judge found that UECA and certain of its members unlawfully delayed in providing information requested by the Union on September 21, 1994, in violation of Section 8(a)(5). In so finding, the judge rejected UECA's argument that it made diligent efforts to procure

the requested information from its members shortly after receiving the Union's request. We agree with the judge in this regard. In its September 21 request, the Union asked for the names, addresses, and telephone numbers of all unit employees, including former employees on temporary layoff and awaiting reemployment. UECA made its first written attempt to secure the requested information by letter dated December 2, 1994, in which UECA asked the employer-members to provide it "a list of workers—your payroll for September 2, 1994." Thus, we affirm the judge's unfair labor practice finding based on the fact that (1) UECA did not make a written request for information from its employer-members until more than 2 months after the Union had submitted its information request to UECA, and (2) even in this belated written request to its members, UECA failed to convey the Union's information request in a complete and accurate way.¹¹ Under these circumstances, we find that UECA did not make "a reasonable good-faith effort to respond to the request as promptly as circumstances allow[ed]." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993).

5. The judge found that the Respondents' refusal and failure to provide all of the information requested by the Union, beginning 1 month before collective bargaining began and continuing through the cessation of bargaining approximately 4 years later, warranted a 12-month extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). The Respondents except, and we find merit in the exception.

We recognize that refusals to furnish information have been found to warrant an extension of the certification year. See, e.g., *Wells Fargo Armored Services Corp.*, 322 NLRB 616 (1996); *Valley Inventory Service*, 295 NLRB 1163 (1989). The duration of such an extension depends, however, on the circumstances of the individual case. In fashioning an appropriate remedy, the Board's task is to provide "a reasonable period of time" for bargaining "without unduly saddling the employees with a bargaining representative that they may no longer wish to have represent them." *Wells Fargo Armored Services*, supra at 617 (internal quotations omitted). Various factors inform our exercise of discretion in this regard, see id., but we find several considerations dispositive here. First, the unlawful conduct was a refusal to give informa-

¹¹ In affirming the 8(a)(5) finding, we do not rely on the judge's finding that UECA President Anthony Cardillo did not credibly testify concerning the date on which he first orally sought information from UECA's employer-members in response to the Union's information request. Nor do we rely on the judge's finding that an exercise of reasonable diligence by UECA would have required the filing of a lawsuit against noncomplying members to secure the requested information.

tion, not a withdrawal of recognition or coercive conduct directed to employees. Although the Board has the authority to extend somewhat the certification year for such a violation, it is not required to do so, i.e., it exercises remedial discretion.¹² Second, more than 11 years have passed since the certification. During an extension of the certification year, employees are unable to exercise their Section 7 right to oust or change their representative. Given the time period involved, we believe that employees should be given that Section 7 right after a reasonable period of time during which the effects of the “information” violation can be remedied.¹³ Thus, for this reasonable time period, the Union will be secured against decertification efforts and rival petitions. Under these circumstances, we find a full-year *Mar-Jac* remedy in this case unwarranted.¹⁴

6. The General Counsel has requested, inter alia, that we order mailing of the notice to all of the unit employees. The General Counsel maintains that posting of the notice at UECA’s office is not a sufficient remedy given that UECA does not employ any of the unit employees and few, if any, of the employees have occasion to visit UECA’s office. The General Counsel further maintains that posting the notice at the offices of the various Respondent employer-members would similarly be inadequate as a remedy because, due to the nature of their

¹² In any event, neither *Wells Fargo* nor *Valley Inventory* grants the 12-month extension sought by our colleague.

¹³ In the related case of *Expert Electric*, supra, which we also issue today, we order UECA, inter alia, to bargain with the Union for a reasonable period of time. See, e.g., *Federal Pacific Electric Co.*, 215 NLRB 861 (1974).

¹⁴ Member Walsh would adopt the judge’s recommendation to extend the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). As the majority acknowledges, the Board has granted such a remedy for 8(a)(5) refusals to furnish requested information, so the only real question is how much of an extension to grant. The factors relevant to that decision include the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations. *Northwest Graphics, Inc.*, 342 NLRB No. 127, slip op. at 2 (2004). Applying these factors, the violation here is that the Respondents withheld from the Union the most basic of all information concerning unit employees, namely, their names, addresses, and telephone numbers. The impact of the violation was that the Union was prevented from ascertaining the wishes of the very employees on whose behalf it was bargaining. As to the Union’s conduct, in the related case of *Expert Electric*, 347 NLRB No. 2 (2006), the Board rejects UECA’s contention that the Union engaged in bad-faith bargaining. Finally, although more than 50 bargaining sessions took place over approximately 4 years, the Respondents never fully supplied the requested information, so there was not a single session at which the Union had the information it needed to fully represent the unit employees. In other words, the Union was effectively deprived of its entire certification year. Under these circumstances, Member Walsh agrees with the judge that a full 12-month extension of the certification year is proper.

work, the unit employees do not regularly report to their employers’ offices. UECA opposes the General Counsel’s notice-mailing request, arguing that such a remedy would impose an unreasonable burden on UECA. We agree with UECA.

Board remedies must be “adapted to the situation which calls for redress.” *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348 (1938). Thus, Board remedies should take into account practical considerations relating to the parties involved. Here, a notice-mailing requirement would require UECA to gather the names and addresses of all former unit employees employed by its numerous employer-members at any time since the date of the first unfair labor practice in this case, which is more than 11 years ago. Under the unusual circumstances of this case, we find a notice-mailing requirement to be unduly burdensome. Therefore, we shall provide for the traditional notice-posting remedy. We also note that nothing precludes the Union from posting copies of the attached notices at the union hall.¹⁵

ORDER

A. The National Labor Relations Board orders that the Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide and delaying in providing Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union) with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent that such information has not been provided already, timely provide the Union with the requested names, addresses, telephone numbers, and job

¹⁵ Member Walsh would modify the judge’s recommended Order as requested by the General Counsel. In his view, the General Counsel’s notice-mailing request is based on the realistic assessment that the unit employees are not likely to see posted notices given that they work in the construction industry. The practical difficulties the majority cites can be worked out between the Respondents and the Region or addressed, if need be, at a compliance proceeding. That the Union may, if it wishes, post copies of the notices at its hiring hall is not an equitable alternative. The Respondents are the wrongdoers here, not the Union.

classifications of unit employees, including former employees on temporary layoff.

(b) Within 14 days after service by the Region, post at its Holbrook, New York facility, copies of the attached notice marked "Appendix B."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) DiFrancia Electric, Inc., Farmingdale, New York, (b) Farica Electric Contracting Corp., New York, New York, (c) G & R Electrical Contracting, Inc., Brooklyn, New York, (d) Lesil Reliable Electric Co., Inc., New York, New York, (e) Lisa Electric, Inc. a/k/a YNR Electric, Brooklyn, New York, (f) Maximum Electrical Contracting, Inc., Astoria, New York, (g) Milad Contracting Corp., Woodside, New York, (h) T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Brooklyn, New York, (i) Mondl Electric Co., Inc., New York, New York, (j) Norlin Electrical Contracting Co., New York, New York, (k) Pantel Contracting Corp., Hopewell Junction, New York, (l) Positive Electric Association, Inc., Long Island City, New York, (m) T & A Electrical Contracting, Brooklyn, New York, (n) Tri-Town Electric Corp., Wantagh, New York, (o) and W. T. Hickey Corp., Huntington Station, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix C."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

C. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) Action Electrical Contracting Corp., Astoria, New York, (b) C. B. Electrical, Bayonne, New Jersey, (c) Eugene Iovine, Inc., East Farmingdale, New York, (d) Expert Electric, Inc., Astoria, New York, (e) Falcone Electric Corp., Brooklyn, New York, (f) Ferrara Electrical Controls, Richmond Hill, New York, (g) Global Electrical Contracting, Yonkers, New York, (h) Granna Electric, Rosedale, New York, (i) Kew Elec-

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tric Co., Brooklyn, New York, and (j) Star Brite Electric Co., Flushing, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying in providing the information requested by the Union on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union the information it requested on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix D."¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

D. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) Alco Electric Co., Bronx, New York, (b) Atlas Electrical Contractors, Inc., Richmond Hill, New York, (c) Bisantz Electric Co., Inc., Jamaica, New York, (d) County Wide Electric, Queens Village,

New York, (e) DeCeck & Leonard, Inc., New York, New York, (f) Eaton Electric, Inc., Yonkers, New York, (g) Gilston Electrical Contracting Corp., New York, New York, (h) J. K. Electric Corp., North Babylon, New York, (i) Lipco Electric Co., Maspeth, New York, (j) Lobello Electrical Installation, Bronx, New York, (k) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp., New York, New York, (l) Paul Mock, Inc., New York, New York, (m) Raymour Electric Co., Jamaica, New York, (n) Schneider Electric Co., Inc., New York, New York, (o) Square Electric Co., Inc., Bronx, New York, (p) T & J Electrical Contractors, Glendale, New York, (q) Tap Electrical Contractors Service, Inc., Holbrook, New York, (r) V & R Electrical Contractors, Inc., College Point, New York, (s) Vintage Electric Corp., Brooklyn, New York, and (t) Cotroneo & Marino's United Electric Co., Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying in providing complete listings of unit employees' telephone numbers in response to the Union's request for this information.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with complete listings of unit employees' telephone numbers in response to the Union's request for this information.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix E."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

¹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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ployed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

E. The National Labor Relations Board orders that the Respondents, (a) Blake Electrical Contracting, Inc., Bronx, New York, (b) Eaton Electric, Inc., Yonkers, New York, (c) J. K. Electric Corp., North Babylon, New York, (d) Mondl Electric Co., Inc., New York, New York, (e) Paul Mock, Inc., New York, New York, (f) Raymour Electric, Inc., Jamaica, New York, (g) Schneider Electric Co., New York, New York, (h) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp., New York, New York, (i) Star Brite Electric Co., Flushing, New York, and (j) T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with monthly remittance reports, for the period from May through October 1997, for the Local 363, International Brotherhood of Teamsters (IBT Local 363) Pension Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with monthly remittance reports, for the period from May through October 1997, for the IBT Local 363 Pension Fund.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix F."²⁰ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facil-

ity involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since October 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2006

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Action Electrical Contracting Corp.	Lobello Electrical Installation
Alco Electric Co.	M.P.E. Electrical Contracting
Atlas Electrical Contractors, Inc.	Corp. d/b/a Star Electric Corp.
Bisantz Electric Co., Inc.	Maximum Electrical Contracting Corp.
Bran Electric Corp.	Milad Contracting Corp.
C. B. Electrical	Mondl Electric Co., Inc.
C & L Electric, Inc.	Norlin Electrical Contracting Co.
Cotroneo & Marino's United Electric Co., Inc.	Pantel Contracting Corp.
County Wide Electric	Paul Mock, Inc.
DeCeck & Leonard, Inc.	Positive Electric Association, Inc.
DiFrancia Electric, Inc.	Raymour Electric Co.
Eaton Electric, Inc.	Schneider Electric Co., Inc.
Eugene Iovine, Inc.	Square Electric Co., Inc.
Expert Electric, Inc.	Star Brite Electric Co.
Falcone Electric Corp.	T & A Electrical Contracting
Farica Electric Contracting Corp.	T & J Electrical Contracting
Ferrara Electrical Controls	T. Reilly Electrical Corp. f/k/a
G & R Electrical Contracting, Inc.	Modica & Reilly Electric Corp.
Gilston Electrical Contracting Corp.	Tap Electrical Contractors Service, Inc.
Global Electrical Contracting	Tri-Town Electric Corp.
Granna Electric	V & R Electrical Contractors, Inc.
Heller Electric Co., Inc.	Vintage Electric Corp.
Interphase Electrical Corp.	W.T. Hickey Corp.
J. K. Electric Corp.	
Kew Electric Co.	
Lesil Reliable Electric Co., Inc.	
Lipco Electric Co.	
Lisa Electric, Inc. a/k/a YNR Electric, Inc.	

²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail to provide or delay in providing Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union) with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees that have not been provided already, including former employees on temporary layoff.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to provide the Union with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND DiFRANCIA
ELECTRIC, INC., FARICA ELECTRIC
CONTRACTING CORP., G & R ELECTRICAL
CONTRACTING, INC., LESIL RELIABLE ELECTRIC
CO., INC., LISA ELECTRIC, INC. A/K/A YNR
ELECTRIC, MAXIMUM ELECTRICAL
CONTRACTING, INC., MILAD CONTRACTING
CORP., T. REILLY ELECTRICAL CORP., F/K/A
MODICA & REILLY ELECTRIC CORP., MONDL
ELECTRIC CO., INC., NORLIN ELECTRICAL
CONTRACTING CO., PANTEL CONTRACTING
CORP., POSITIVE ELECTRIC ASSOCIATION, INC.,
T & A ELECTRICAL CONTRACTING, TRI-TOWN
ELECTRIC CORP., AND W.T. HICKEY CORP.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT delay in providing the information requested by the Union on September 21, 1994, including the requested telephone numbers of unit employees but excluding employees social security numbers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union the information it requested on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND ACTION
ELECTRICAL CONTRACTING CORP., C. B.
ELECTRICAL, EUGENE IOVINE, INC., EXPERT
ELECTRIC, INC., FALCONE ELECTRIC CORP.,
FERRARA ELECTRICAL CONTROLS, GLOBAL
ELECTRICAL CONTRACTING, GRANNA
ELECTRIC, KEW ELECTRIC CO., AND STAR
BRITE ELECTRIC CO.

APPENDIX E

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on
your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT delay in providing complete listings of employees' telephone numbers in response to the Union's request for this information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with complete listings of unit employees' telephone numbers in response to the Union's request for this information.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND ALCO
ELECTRIC CO., ATLAS ELECTRICAL
CONTRACTORS, INC., BISANTZ ELECTRIC CO.,
INC., COUNTY WIDE ELECTRIC, DECECK &

LEONARD, INC., EATON ELECTRIC, INC.,
GILSTON ELECTRICAL CONTRACTING CORP.,
J. K. ELECTRIC CORP., LIPCO ELECTRIC CO.,
LOBELLO ELECTRICAL INSTALLATION, M.P.E.
ELECTRICAL CONTRACTING CORP. D/B/A STAR
ELECTRIC CORP., PAUL MOCK, INC., RAYMOUR
ELECTRIC CO., SCHNEIDER ELECTRIC CO., INC.,
SQUARE ELECTRIC CO., INC., T & J ELECTRICAL
CONTRACTORS, TAP ELECTRICAL
CONTRACTORS SERVICE, INC., V & R
ELECTRICAL CONTRACTORS, INC., VINTAGE
ELECTRIC CORP., AND COTRONEO & MARINO'S
UNITED ELECTRIC CO., INC.

APPENDIX F

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on
your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to provide the Union with monthly remittance reports, for the period from May through October 1997, for the Local 363, International Brotherhood of Teamsters (IBT Local 363) Pension Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with monthly remittance reports, for the period from May through October 1997, for the IBT Local 363 Pension Fund.

BLAKE ELECTRICAL CONTRACTING, INC.,
EATON ELECTRIC, INC., J. K. ELECTRIC CORP.,
MONDL ELECTRIC CO., INC., PAUL MOCK, INC.,
RAYMOUR ELECTRIC, INC., SCHNEIDER
ELECTRIC CO., M.P.E. ELECTRICAL
CONTRACTING CORP. D/B/A STAR ELECTRIC
CORP., STAR BRITE ELECTRIC CO., AND T.
REILLY ELECTRICAL CORP. F/K/A MODICA &
REILLY ELECTRIC CORP.

Elias Feuer, Esq., for the General Counsel.

Richard Brook and Patricia Palmeri, Esqs., of Mineola, New York, for Local 3.

Steven Goodman and Bonnie Parente, Esqs. (Jackson, Lewis, Schnitzler & Krupman, Esqs.), of Woodbury, New York, for Respondent United Electrical Contractors Association and certain individual-employer members of the Association.

James Frank and David Prager, Esqs. (Phillips Nizer Benjamin Krim & Ballon, LLP), for Respondent Expert Electric.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. On February 23, 1993, Local 3 was certified by the Board following an election in which Local 3 received more votes than Local 363, Teamsters, which had represented UECA's employees for approximately 20 years. The certified unit is as follows:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

On December 23, 1994, a charge was filed in Case No. 29-CA-18784 by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, (Local 3 or Union). The charged party was named as the United Electrical Contractors Association (UECA), a multiemployer association.

In the boxes in the charge form stating "Employer Representative" and "Address", the charge stated "See attached list". The attached list set forth the names and address of 91 companies which were allegedly served with a copy of the charge. UECA was not separately mailed a copy of the charge inasmuch as it did not have a separate office. However, Tap Electrical Contractors Service (Tap), whose president also served as president of UECA and whose business address functioned as the office of UECA, was also allegedly sent a copy of the charge. No return receipts evidencing service of the charge or affidavit of service of the charge were received in evidence. Respondents deny knowledge or information concerning the service of the charge. However, the complaint, described below, was properly served. Affidavits of service and return receipts establishing service of the complaint were received in evidence.

The charge alleged essentially that since about September 21, 1994, UECA and the employer members of UECA have refused to provide information to Local 3. The charge states:

Specifically, the UECA and its 91 employer members as set forth in the attached certification and list in Case No. 29-CA-7191, have failed to provide the names, addresses, telephone

numbers, social security numbers and classifications of unit employees.¹

On February 28, 1995, a complaint was issued in Case No. 29-CA-18784 against "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members". The employer-members were not individually named in the complaint, which alleged that Local 3 requested that UECA furnish it with the following information:

a) A list of the names, addresses, telephone numbers and job classifications of all employees in the certified bargaining unit. . . . and

b) A list of all such employees who are currently on temporary layoff status.

The complaint concedes that certain information was furnished but alleges that UECA (a) with respect to certain employers delayed furnishing certain of the requested information and (b) with respect to certain employers failed to furnish all of the information in violation of Section 8(a)(1) and (5) of the Act. The complaint was served by certified mail upon UECA at its office address at Tap's office, and upon 91 alleged employer-members of UECA. Affidavits of service and return receipts establish that service of the complaint was made upon the Respondents on February 28 and March 3, 1995.

Apparently, the complaint was not prosecuted until more than 5 years later when on June 16, 2000, an amended complaint was issued. The caption of the amended complaint read: "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members (See Appendix)". The affidavits of service and return receipts establish that the 50 listed employer-members of UECA were served with the amended complaint. Thus, the amended complaint expressly named the individual-employer members as named Respondents unlike the original complaint which omitted such names. Aside from the addition of the employer-members' names, the amended complaint is substantively identical to the original complaint.

Answers to the amended complaint were filed by UECA in behalf of its employer-members, and by Expert Electric Co., Inc. (Expert), and by certain other respondents. The answers deny knowledge or information concerning the service of the charge. Affidavits of service and return receipts establish that the amended complaint was properly served. The answers generally denied the material allegations of the amended complaint and asserted certain affirmative defenses which will be discussed below.

A motion to dismiss and a motion for summary judgment regarding Case No. 29-CA-18784 were filed with the Board. They alleged essentially that (a) a finding against the individual-employer members of UECA must be dismissed pursuant to Section 10(b) of the Act (b) the 5 year delay in amending the complaint to name the individual-employer members of UECA violated due process and notice requirements (c) UECA has been prejudiced by the failure to join the individual-employer

¹ The case number is incorrect. It should refer to Case No. 29-RC-7191.

members in the original complaint and (d) Expert provided the information requested to Local 3, and thereafter the Regional Office approved the withdrawal of a charge in Case No. 29-CA-21456-6 as to Expert prior to the issuance of the amended complaint. On September 5, 2000, the Board denied the motions on the grounds that they raise genuine issues of material fact which would better be resolved after a hearing before an administrative law judge. The matters raised in the motions are discussed herein. On October 19, 23 and 27, 2000, a hearing was held before me in New York, New York.

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by counsel for the General Counsel, Local 3, UECA, Expert, and Square Electric, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and UECA admits that it has been an organization composed of various employers engaged as electrical contractors in New York State, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including Local 3.

The complaint also alleges and UECA admits that during the year ending December 31, 1994, the employer-members of UECA, collectively, in the course and conduct of their business operations, derived gross revenue from such operations in excess of \$50,000, and purchased and received at their facilities, electrical products and other supplies and materials valued in excess of \$500,000 directly from points outside New York State. UECA further admits that it and its employer-members have been employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

UECA denied that Local 3 is a statutory labor organization. Local 3 is a long-established union which has represented employees in the electrical industry for many years. It was certified as the representative of the unit employees here. I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

A. Background

As set forth above, UECA refused to bargain with Local 3 in order to test the certification and on October 29, 1993, the Board granted the General Counsel's motion for summary judgment and directed that UECA bargain with *Local 3 UECA*, 312 NLRB 1118 (1993). On September 2, 1994, the Second Circuit Court of Appeals enforced the Board's bargaining order.

B. Case No. 29-CA-18784

1. The request for information concerning unit employees

On September 21, 1994, Local 3 sent the following letter to UECA's attorney, UECA, and 91 individual-employer members of UECA:

In preparation for collective bargaining Local 3 requests that it be sent the names, addresses, telephone numbers and Social Security numbers of each employee of each of the 91 UECA employers that are covered by the 2nd Circuit's September 2nd Order and those former employees who are on temporary layoff and awaiting re-employment.

Although the Union's letter requested the social security numbers of employees, the complaints which issued in this case do not allege that Respondents violated the Act by refusing to furnish the social security numbers of employees. Accordingly, no violation shall be found concerning the social security numbers.

On October 7, 1994, Anthony Cardillo, the president of UECA, wrote to UECA members advising them to attend a meeting on October 12. At that time, UECA had not been holding regular meetings, but it began holding monthly meetings thereafter. Cardillo testified that at the October 12 meeting he asked the contractors to supply the information requested by Local 3. He explained at hearing that UECA does not maintain and does not possess the information requested and must obtain it from its members. Following the October 12 meeting, he made general announcements requesting that the contractors supply the information requested, including the employees' classifications.

On October 14, UECA's attorney wrote to Local 3 advising that it was attempting to contact all the employers to which Local 3's September 21 letter was addressed. He further advised that when the information requested becomes available it will be provided, with the caveat that "some of the information you request appears to go beyond legal requirements."

Vincent McElroen, the business representative and negotiator for Local 3, testified that at the first bargaining session on October 24, Mr. McSpedon, the president of Local 3, requested the information set forth in the Union's September 21 letter and further asked that it include the employee's classification, and that each employee be identified by the employing shop.² McElroen testified that Local 3 needed the information because (a) the unit employees were not accessible at their employers' place of business since they work at job sites at various locations and it sought to communicate with the unit members to solicit their views as to contract demands and because (b) it never had an accurate list of who was in the unit since no *Excelsior* list was provided prior to the election. McElroen testified that Andrew Peterson, UECA's attorney, responded that Local 3 was entitled to the information which would be provided when he received it. McElroen stated that he asked for the names of employees on layoff status because such employees are usually temporarily laid off while awaiting work from their former employer and are therefore part of the unit whose views as to negotiations were important. McElroen stated that Local 3 never received any information concerning former employees who were temporarily laid off and awaiting reemployment.

On October 3, November 10, November 18 and December 22, McElroen sent letters to UECA's counsel repeating Local

² UECA's notes of the October 24 session do not reflect that McSpedon asked that the list be broken down by shop.

3's requests for the information set forth in the Union's September 21 letter.

On December 2, 1994, Cardillo sent a letter to contractors asking for a "list of workers—your payroll for September 2, 1994." Cardillo testified that this was the first letter sent by UECA to its members asking for information, although oral requests had been made as early as October 12.

McElroen testified that Local 3 first received information from UECA at the December 14 negotiation session.³ The information provided was a list of 222 names and addresses of employees. McElroen protested that the list was not responsive to Local 3's request because the telephone numbers, social security numbers, layoff list, classifications, and identification of employee by employer were not included. McElroen also commented that the list could not have included all the unit employees since the tally of ballots at the election listed 780 eligible voters.

At the December 20 bargaining session an additional 88 names and addresses were turned over to Local 3. McElroen again complained that the list contained fewer names than expected, no phone numbers, no classifications and the list was not broken down by employer. According to McElroen, UECA attorney Steven Goodman said that he was not aware that the Union had requested employee classifications, but in any event he would "rework" the list so that it would contain classifications. Given the lack of documentary evidence supporting McElroen's alleged request for the classifications of employees prior to December, 1994, I cannot find that Local 3 requested such information at the October 24 negotiation session, or at any time prior to the December 20 session. Accordingly, I find that classifications of employees were first requested at the December 20 meeting.

Further, on January 5, 1995, a list containing 328 names and addresses was supplied which also set forth the employer's name. McElroen again protested that the list was incomplete.

On January 6, 1995, Cardillo sent a letter to contractors advising that "we are now required to obtain from you the social security numbers, classifications and telephone numbers" for employees on their payrolls on September 2, 1994.

On January 25, Local 3 received a list of 300 names and addresses of employees, with their classifications, and 111 phone numbers and employers' names. Only some of the contractors provided phone numbers for their employees. On February 8, a list containing 333 names and addresses, 333 classifications, 243 phone numbers and employers' names was received. Thereafter, on February 22, Local 3 was given a list incorporating 356 names, 356 classifications, 293 phone numbers and 38 employers.

³ I reject Expert's claim that such information was provided on October 19. I credit McElroen's testimony that he mistakenly wrote "October 19" on the list he received on December 14, but that he did not receive any of the requested information until December 14. It is unlikely that by October 19 the extensive list of names and addresses from various employers would have been sent to UECA and then transmitted to Local 3 even assuming that the contractors were informed at a meeting on October 12 that they had to provide such information.

On March 6, 1995, Cardillo advised the UECA contractors that "the NLRB is now asking for the hourly rate of the electricians, along with information on any electricians that were on a temporary lay-off" for the payroll period of September 2, 1994. A list containing 431 names and addresses was given to Local 3 on March 23.

On April 5, UECA sent letters to employers which failed to provide some or all of the requested information asking that they do so.

On May 18, 1995, UECA advised its contractors that this was their "last chance to comply" with UECA's requests for information, and asked that they submit a list of employees who were on the payroll for the week of September 2, 1994.

The June 9, July 6 and August 1 lists turned over to Local 3 contained further information.

On August 3, 1995, UECA asked its contractors for the information regarding their employees for the week ending July 28, 1995 because of the amount of time taken in obtaining the information requested. On September 28, a list which contained 327 names was submitted to Local 3.

Information continued to be provided through lists turned over to Local 3 on January 10, June 12, and June 27, 1996, and May 14, 1997.

Each time information was provided to UECA, it promptly turned over such information to Local 3.

Cardillo testified that legal action has never been brought against an employer-member of UECA who had been providing information during negotiations. The by-laws of UECA provide that it is empowered to institute "legal proceedings, for the accomplishment of any purpose or enforcement of any rule or regulation . . . which may be recognized as proper and lawful objectives of the Association. . . ."

McElroen testified that during negotiations, he was told that UECA was experiencing difficulty in contacting the individual-employer members because some were out of business or moved and changed their phone numbers. McElroen suggested that UECA bring a lawsuit against its members to require them to submit the information, and also recommended that UECA obtain the current names and addresses of electrical contractors from the New York City Licensing Board. McElroen explained at hearing that anyone performing electrical work in New York City must have a license, a place of business in New York City and a current phone number. McElroen stated that when he asked UECA in 1995 if it contacted the Licensing Board he was told that UECA's method of contacting its members was none of his business. McElroen learned the correct names and addresses of UECA members though this method but could not recall if he shared that information with UECA.

2. The violations found

General Counsel seeks a finding against UECA and certain individual-employer members of UECA, as follows:

1. General Counsel argues, and the evidence establishes, that UECA did not submit any of the requested information for the following individual-employer members of UECA:

(a) DiFrancia Electric, Inc. (b) Farica Electric Contracting Corp.⁴ (c) G & R Electrical Contracting, Inc. (d) Lesil Reliable Electric Co., Inc. (e) Lisa Electric, Inc. a/k/a YNR Electric (f) Maximum Electrical Contracting, Inc. (g) Milad Contracting Corp. (h) Modica & Reilly Electric Corp. (i) Mondl Electric Co., Inc. (j) Norlin Electrical Contracting Co. (k) Pantel Contracting Corp. (l) Positive Electric Association, Inc. (m) T & A Electrical Contracting (n) Tri-Town Electric Corp. (o) and W.T. Hickey Corp.

2. General Counsel argues, and the evidence establishes, that UECA did not submit telephone numbers of employees employed by C & L Electric, Inc., and Heller Electric Co., Inc. However, as to C & L, various lists submitted by that employer stated that no employees were employed. No contrary evidence was adduced. According to the information supplied by Heller, which employed only 2 employees, Avraham Heller and Moshe Heller, I cannot find that the evidence establishes that they had telephone numbers to provide. I accordingly cannot find a violation based upon the failure by C & L and Heller to submit telephone numbers of their employees.

3. General Counsel argues, and the evidence establishes, that UECA delayed in furnishing complete information, which included the telephone numbers of unit employees employed by the following employer-members until January 25, 1995, four months after the initial request of Local 3:

(a) C.B. Electrical (b) Eugene Iovine, Inc. (c) Expert Electric, Inc. (received by UECA on January 12 and transmitted by UECA to Local 3 on January 25. (d) Falcone Electric Corp. (e) Ferrara Electrical Controls (f) Global Electrical Contracting (g) Granna Electric (h) Kew Electric Co. and (i) Star Brite Electric Corp.

On January 25, Local 3 received a list of telephone numbers of employees in addition to the names, addresses, classifications of employees and the names of the shops they were employed by. Prior to January 25, telephone numbers had not been supplied.

4. General Counsel argues and the evidence establishes that UECA delayed in furnishing complete listings of phone numbers on behalf of the following employer-members. During the period February 8, 1995 to September 28, 1995 UECA submitted phone numbers for all the employees of the following employer-members:

(a) Alco Electric Co. (b) Atlas Electrical Contractors, Inc. (c) Bisantz Electric Co., Inc. (d) County Wide Electric (e) DeCeck & Leonard, Inc. (f) Eaton Electric, Inc. (g) Gilston Electrical Contracting Corp. (h) J.K. Electric Corp. (i) Lipco Electric Co. (j) Lobello Electrical Installation (k) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp. (l) Paul Mock, Inc. (m) Raymour Electric Company (n) Schneider Electric Com-

pany, Inc. (o) Square Electric Co., Inc. (p) T & J Electrical Contractors (q) Tap Electrical Contractors Service, Inc. (r) V & R Electrical Contractors, Inc. (s) Vintage Electric Corp. and (t) Controneo & Marino's United Electric Co., Inc.⁵

With respect to the above, it bears repeating that no telephone numbers of any employees were submitted by UECA until January 25, 1995 notwithstanding that Local 3 requested such information on September 21, 1994.

McElroen testified that Local 3 had not received for certain employers the names, addresses, telephone numbers and job classifications from the time requests for that information were made in letters dated October 31, 1997, December 26, 1997, January 9 and January 15, 1998 to March 19, 1998. However, no requests for such information were contained in those letters. Rather, the letters requested information concerning the monthly remittance reports. Accordingly, I do not place any reliance upon McElroen's testimony concerning alleged updated requests for such information.

C. Case No. 29-CA-21456 et al.

The Request for Remittance Reports

Charges were filed by Local 3 on September 30, 1997, alleging that certain employer-members of UECA refused to provide certain information to Local 3.

On March 19, 1998, a complaint was issued against 39 Respondents. The complaint alleges and Respondents admit that they performed services valued in excess of \$50,000 for various enterprises and governmental entities in New York State, each of which enterprises, in turn, is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow. The complaint alleges and the answers admit that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The answers to the complaint deny knowledge or information concerning the service of the charges but affidavits of service and return receipts establish that service of the charges was proper.

The complaint alleges and Respondents admit that since about April, 1996, the employer-members of UECA, including the Respondents, were required to make monetary contributions to the Building Trades Funds which were established by UECA pursuant to the terms of collective-bargaining agreements with Local 363, the predecessor collective-bargaining representative of the unit employees. The complaint further alleges and Respondents admit that on various dates from October 31, 1997 through January 15, 1998, Local 3 made written requests of UECA for the remittance reports submitted to the Building Trades Funds and to the Local 363 Pension Funds relating to the employees of UECA's employer-members. The complaint also alleges and Respondents admit that Local 3 orally re-

⁴ UECA claims that Farica was never represented by it in negotiations and was not on the list of individual-employer members of UECA given to Local 3. However, on October 2, 2000, Farica acknowledged, by letter, that it was bound by the 1993 certification and that it was a member of UECA and represented by it in negotiations. I accordingly find that Farica is properly subject to an Order in this case.

⁵ General Counsel also alleged that UECA had delayed in furnishing telephone numbers for the employees of Action Electrical Contracting Corp. until the period February 8, 1995 through September 28, 1995. However, the list submitted on January 25, 1995 sets forth the phone numbers of all four of Action's employees. Accordingly, I have omitted Action from this list of the companies as to which submission of telephone numbers were delayed.

quested UECA to have its employer-members furnish the names, addresses, telephone numbers and job classifications of their employees.

The complaint alleges and Respondents admit that information concerning the names, addresses, telephone numbers and job classifications is necessary for and relevant to Local 3's performance of its duties as the exclusive collective-bargaining representative of the employees of Respondents. The complaint also alleges, but Respondents deny, that the remittance reports are necessary for and relevant to Local 3's performance of its representative duties. Finally, the complaint alleges, and Respondents deny, failing and refusing to furnish the requested information.

On October 31, 1997, Local 3 made a written request to the attorney for UECA for the following information:

Copies of the monthly remittance reports for the months of May through October, 1997, submitted by each Employer to the Building Trades Benefit Plans and Local 363, IBT Pension Plan.

By letters dated December 26, 1997, January 9, 1998 and January 19, 1998, Local 3 renewed its request for the remittance reports.

On April 8, 1998, Building Trades Fund remittance reports for twenty employers were sent to Local 3.⁶ However, the Local 363 IBT Pension Fund remittance reports were not submitted as requested.

McElroen testified without contradiction that through the date of this hearing, Local 3 had not been given remittance reports submitted to the Local 363 Pension Fund for the following employer-members of UECA:

(a) Blake Electric Contracting, Inc. (b) Eaton Electric, Inc. (c) J.K. Electric Corp. (d) Mondl Electric Co., Inc. (e) Paul Mock, Inc. (f) Raymour Electric Co. (g) Schneider Electric Co. (h) Star Electric Corp. (i) Star-Brite Electric Co. and (j) T. Reilly Electric Corp. f/k/a Modica & Reilly Electric Corp.⁷

III. ANALYSIS AND DISCUSSION

A. Procedural Issues

Due Process and Laches—Case No. 29–CA–18784⁸

Respondents argue that the amendment to the complaint naming 50 individual-employer members of UECA as respondents nearly 5-1/2 years after the original complaint was issued constitutes a violation of due process warranting dismissal of the amended complaint. Respondents assert that although the original charge was filed against UECA and its 91 employer-

members, the original complaint which was issued in February, 1995, named only UECA as a respondent. It should be noted, however, that the caption of the complaint was entitled UECA "and its individual-employer members."

In arguing that service of the complaint upon an employer association cannot constitute service upon its members, Respondents ignore the fact that the original complaint was served upon the employer-members of UECA. Further, the complaint did not name only UECA. Its caption named, in addition, the employer members of UECA.

Although there was no evidence that the charge was served upon the Respondents, it is clear that the original complaint was properly served. Even assuming the charge was not served, proper service is obtained by service of the complaint within the Section 10(b) period. Here, the alleged unfair labor practice occurred on September 21, 1994. Inasmuch as the complaint was served upon the Respondents on February 28 and March 3, 1995, service of the complaint was made within the 10(b) period. *Buckeye Plastic Molding*, 299 NLRB 1053 (1990). I accordingly find and conclude that proper service has been made upon all the Respondents. *Southwestern Colorado Contractors Assn.*, 153 NLRB 1141, 1147 (1965).

Respondents contend that the amended complaint failed to give the individual-employer members named therein timely notice of the alleged failure to provide information in 1994. They assert that inasmuch as they were omitted from the original 1995 complaint they had no reason to believe that they were active parties to the matter who needed to preserve evidence to defend their behavior 5 years later.

The original complaint set forth in the caption that the Respondents were "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members". All 91 members of UECA were served with the original complaint. Notwithstanding that they were not specifically named as respondents in the text of the original complaint, they clearly were on notice that they were involved in this proceeding and that their conduct in furnishing or not furnishing UECA with the requested documents would be part of the proof at a hearing.

The elements of proof required by the equitable defense of laches are (a) lack of diligence by the party against whom the defense is asserted and (b) prejudice to the party asserting the defense. *Roofing, Metal & Heating Associates*, 304 NLRB 155, 160 (1991). Here, there is clearly a lack of diligence by General Counsel in prosecuting these cases. More than five years had elapsed between the issuance of the original complaint and the issuance of the amended complaint. The amended complaint did no more than add the individual-employer members of UECA as named Respondents. No explanation was made by General Counsel as to the reason for the delay. However, "the Board has consistently held that the doctrine of laches is generally inapplicable to Board proceedings." *St. Anthony Hospital Systems*, 319 NLRB 46, 51 (1995). Where prosecutorial delay is not calculated to deny a respondent a fair hearing the defense of laches must fail. *Consolidated Casinos Corp.*, 266 NLRB 988, 992 (1983). "The Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrong-

⁶ The twenty employers included Blake, Eaton, Paul Mock, Raymour, Schneider, Star Brite, and Star Electric.

⁷ On April 27, 1997, a letter from T. Reilly was sent to Local 3 by UECA which stated that Reilly employed no workers since August, 1997. However, inasmuch as reports from the months of May, June and July were also sought, by not submitting any reports for those months, UECA and Reilly have unlawfully failed to supply the requested information.

⁸ Motions to dismiss and for summary judgment were made by Respondents which will be discussed here.

doing employers.” *NLRB v. J. H. Rutter-Rex Manufacturing Co.*, 396 U.S. 262, 265 (1969).⁹

Respondents were not denied a fair hearing due to the delay in the issuance of the amended complaint and in bringing this case to hearing. The only issue presented here is whether certain information was provided to Local 3 upon its request. Thus, the question is what happened historically—in the past—when Local 3 requested the information. Was the information provided at that time or was it not? Clearly, several parties possessed evidence as to what data was submitted to Local 3: UECA, the individual employers who submitted the information to UECA, and Local 3 which received it. Accordingly, Respondents are not prejudiced by the passage of time. In addition, all Respondents had an opportunity to appear at the hearing, and certain Respondents did appear at the hearing and defended the allegations against them, presenting evidence as to what information was turned over to Local 3 and when it was submitted. There has been no showing of prejudice to Respondents in the delay in issuing the amended complaint and in prosecuting these cases. All Respondents had an opportunity to appear and defend their interests. Many were represented by the law firm which represented UECA.

UECA further asserts that on June 26, 1995, it provided the Regional Director with a list of employers who were cooperating and those who had not cooperated with UECA in its attempt to provide Local 3 with requested information. UECA stated that it assumed that the Regional Office would take “appropriate action against those companies who have not cooperated, and not inappropriately impute such misconduct to [UECA] and its cooperating membership. . . .” On October 9, UECA sent a list of cooperating and non-cooperating contractors to Local 3. General Counsel argues that it is irrelevant that the Regional Office knew which companies were cooperating and which were not. I agree. The issue is whether the requested information was provided.

Expert contends that this case should be dismissed against it because it provided requested information in Case No. 29–CA–21456–6 and, accordingly that charge was withdrawn. Expert asserts that representations were made to it by the Regional Office at the time of the withdrawal of the charge that there were no cases involving requests for information pending against it. Of course, the original complaint was pending, but that named only UECA as a respondent. Thereafter, the amended complaint was issued which named Expert as a respondent.

Even assuming that misrepresentations were made to Expert, I find that they do not constitute a defense to the amended complaint allegation that it did not furnish requested information. The withdrawal of a different charge against Expert is distinct from the issues raised in this case. I accordingly reject Expert’s argument.

⁹ Although *Rutter Rex* involved a backpay claim, the same principle applies here. The employees here are the wronged party inasmuch as Respondents’ failure to provide, or delay in providing relevant information had an adverse effect upon Local 3’s ability to represent them in collective-bargaining negotiations.

B. Substantive Issues

1. The relevance of the requested information

Respondents deny the relevance of the requested information. Information sought concerning bargaining unit employees is presumptively relevant for purposes of collective bargaining and must be furnished upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *People Care, Inc.*, 327 NLRB 814, 823 (1999). Names, addresses, telephone numbers, classifications of employees and those on layoff have been found to be presumptively relevant. *Maple View Manor*, 320 NLRB 1149 (1996); *People Care, Inc.*, above; *Schuylkill Contracting Co.*, 271 NLRB 71, 72 (1984). In addition, information concerning the amount of an employer’s contributions to a pension plan—the remittance reports requested here—is also necessary and relevant to Local 3’s representative responsibility. *Right Away Foods*, 270 NLRB 1278, 1280 (1984).

I accordingly find and conclude that all the information requested, as set forth in the amended complaint, was relevant and necessary to Local 3’s performance of its responsibilities toward the unit employees. Accordingly, Respondents were required to furnish to Local 3 the information requested.

2. The inability of UECA to provide the requested information and other defenses

The Board has stated that a union is entitled to requested information at the time it makes its initial request and it is the respondent’s duty to furnish it as promptly as possible. *Peneco, Inc.*, 212 NLRB 677, 678 (1974). In determining whether a specific period of time constituted undue delay in providing information, the Board has stated that “the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow.” *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993); *FMC Corp.*, 290 NLRB 483, 489 (1988).

UECA’s failure to make reasonable efforts to obtain the requested information would not have satisfied its bargaining obligation under Section 8(a)(5) of the Act. *Rice Growers Assn.*, 312 NLRB 837 (1993). “In evaluating the promptness of the information requested, the Board will consider the complexity and extent of the information sought, its availability and the difficulty in retrieving the information.” *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

As set forth above, on September 21, 1994, Local 3 first requested names, addressees, telephone numbers and names of employees on layoff.

UECA argues that it made a diligent, immediate effort to obtain the information from its member-employers. UECA president Cardillo testified that at a meeting on October 12, 1994 he asked the contractors to supply the requested information, and UECA’s attorney advised Local 3 on October 14 that UECA was attempting to contact all the employers to which Local 3’s September 21 letter was sent.

I cannot credit Cardillo’s testimony concerning his alleged request on October 12. If such a request was made it is likely that the contractors would have responded more quickly than they actually did. In fact, the first information given to Local 3

was on December 14, which included names and addresses of certain employees. It must be assumed, as UECA's attorney promised in his letter of October 14, that when the information became available it would be supplied to Local 3. Accordingly, I find that the first information became available shortly before December 14. That date coincides with December 2, when UECA admittedly sent its first letter to contractors requesting that they submit a "list of workers—your payroll for September 2, 1994."

A finding is therefore warranted that UECA first requested information from its contractors in its letter of December 2, which was 2-1/2 months after the Union's request. And even that request was incomplete—UECA asked only for a list of workers, notwithstanding that the Union had requested telephone numbers and information concerning employees who were on layoff status.

I accordingly find that UECA delayed in diligently requesting the information asked for by the Union. In addition, the information which was supplied was not furnished in a timely manner or in its entirety, as requested. Rather, the information was supplied over a long period of time and when it was turned over it was incomplete, omitting telephone numbers and information concerning laid off employees. Further, requested information, set forth above, for certain employers, was not provided at all. "An unreasonable delay in furnishing . . . information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Woodland Clinic*, 331 NLRB 735, 736–737 (2000). The delay in providing the information "severely diminished the usefulness to the Union, at the time it was provided, of the requested information." *Woodland*, above at 737.

UECA asserts that although it was willing to provide the requested information and diligently sought it, it was unable in many instances to obtain the cooperation of its employer-members who failed to submit it to UECA. As testified by Cardillo, UECA does not maintain the information requested but must rely upon its members, who are in possession of the information, to furnish it to UECA for submission to Local 3.

UECA argues that a finding against it would not effectuate the purposes of the Act inasmuch as UECA does not maintain records of employee bargaining unit members, and UECA cannot, on its own, generate any of the requested information. It can only make reasonable efforts to obtain information from its employer-members. UECA asserts that although it was unable to provide the requested information since it did not maintain the information, it made reasonable and prompt efforts to obtain the information and, in addition, promptly provided all the information that it was able to obtain.

UECA correctly argues that the Board holds that the duty to provide information requires a reasonable, good faith effort to supply the data requested. It is also true that UECA frequently and periodically requested and even demanded that its contractors supply information, and also threatened that the Board may seek to find them in contempt of the Second Circuit's order requiring good faith bargaining if they do not supply the information. General Counsel argues that UECA did not do enough. Its by-laws provide that it could bring a lawsuit against its members to accomplish any lawful purpose—which in this case

would include the turning over of information and General Counsel suggests that UECA should have sued its member-contractors. Cardillo stated that it did not sue contractors which were cooperating with it. However, it does not appear that UECA sued those which were not cooperating. Instead, it gave a list of the noncooperating contractors to the Regional Office and to the Union with a request that it take appropriate action against them.

Although I can understand UECA's predicament in not being able, by persuasion, to convince its contractors to supply the information, I do not believe that it should be relieved of its obligation, as the representative of the contractors and the representative which was ordered to bargain with the Union, to take punitive steps, if necessary, to force compliance with its duty to provide information.

A dangerous precedent would be established if it was held that an employer association could be relieved of its responsibility to provide information simply by asserting that its employer-members refused to supply it, without doing as much as it could to ensure that those members complied with the union's requests.

In this case, UECA having found that its requests that its members furnish information were not promptly and completely complied with, I find that it had an obligation to take additional measures to compel compliance with its requests, including the institution of a lawsuit against its noncomplying contractors.

UECA defended its failure to provide lists of laid off employees on the ground that UECA contractors do not maintain layoff lists. UECA president Cardillo testified that Tap does not maintain a layoff list. Both he and UECA official Bellantoni testified that no layoff lists were kept by the contractors.

However, Local 3 did not request a layoff list. Rather, it requested "a list of all such employees who are currently on temporary layoff status." Accordingly, what was being sought was a list of names of employees on layoff status, which could have been compiled by the contractors. Notwithstanding that no formal "layoff list" was maintained by the employers, there were employees on layoff whose names could have been assembled and provided to Local 3. Accordingly, I reject Respondents' argument that inasmuch as no "list" was maintained, the information requested—employees on layoff status—could not have been supplied.

CONCLUSIONS OF LAW

1. The Respondents, UECA, and the employer-members of UECA, are employers within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since February 23, 1993, Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO has been, and is, the exclusive representative of the employees in the following appropriate collective-bargaining unit within the meaning of Section 9(a) of the Act:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field em-

ployed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By failing to provide Local 3 with certain information and by delaying in furnishing information to Local 3 pursuant to its written request dated September 21, 1994, and the classifications of employees, Respondents violated Section 8(a)(1) and (5) of the Act.

5. By failing to provide Local 3 with remittance reports made to the Local 363, IBT Pension Plan, pursuant to its written request dated October 31, 1997, Respondents violated Section 8(a)(1) and (5) of the Act.

6. These unfair labor practices affect commerce within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondents furnish Local 3 with all the information requested by Local 3 in its letters of September 21, 1994 and October 31, 1997, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

General Counsel requested a remedy pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). That case extended the certification year for one additional year because of the employer's refusal to bargain with the union.

On September 24, 1994, the Second Circuit Court of Appeals enforced the Board's order requiring bargaining by UECA. Bargaining began on October 24, 1994. The certification year began following affirmance of the Board's bargaining order and when bargaining in good faith begins. Accordingly, the certification year began on October 24, 1994. *Van Dorn Plastic Machinery Co.*, 300 NLRB 278, 279 (1990).

In assessing the appropriate remedy in such circumstances, it is necessary to take into account the realities of collective-bargaining negotiations by providing a reasonable period of time in which Local 3 and Respondents "can resume negotiations and bargain for a collective-bargaining agreement "without unduly saddling the employees with a bargaining representative that they may no longer wish to represent them. Various factors are considered in making such an evaluation, including the nature of the violations found, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations." *Wells Fargo Armored Services Corp.*, 322 NLRB 616, 617 (1996).

I find that Respondents' ongoing unlawful refusal and failure to supply the requested information since September, 1994 through the cessation of bargaining in June, 1998, precluded Local 3 from engaging in meaningful bargaining, particularly, as testified by McElroen, preventing Local 3 from being able to contact a significant number of employees in order to obtain their views upon the bargaining proposals of Local 3. Refusals to furnish information have led to extensions of the certification

year. *Wells Fargo*, above; *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1045 (1996). I am aware that more than 50 bargaining sessions took place in the 4 years of bargaining, and that UECA's defense is that it was unable to obtain the information from its individual-employer members. Nevertheless I believe that because information fundamental and essential to the representation of the employees by Local 3 was not available to it during the course of the bargaining, a 1-year extension of the certification year is appropriate. I further do not believe that there has been sufficient evidence that Local 3 acted unreasonably under the circumstances or contributed to the unfair labor practices of Respondents.

As set forth above, the charge alleging a failure to provide information was filed on December 23, 1994 based upon an unfair labor practice which I have found occurred on September 21, 1994, specifically, Respondents' failure and refusal to furnish certain information. Accordingly, the certification year had not yet run when this unfair labor practice occurred. Inasmuch as the unfair labor practice continued for more than 1 year, I shall order that the certification year be extended for an additional 12 months from the resumption of bargaining.

I accordingly shall order that the certification year be extended for 1 year, starting with the date upon which Respondents provide Local 3 with all the requested information except such information already provided to Local 3, and except the social security numbers of employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

A. The Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide certain information to Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, and delaying in furnishing other information to Local 3.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with Local 3 as the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 12 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electric

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

cal Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Provide Local 3 with the requested information except such information already provided to Local 3.

(c) Within 14 days after service by the Region, post at its facility in New York, NY, copies of the attached notice marked "Appendix B."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 21, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) DiFrancia Electric, Inc. (b) Farica Electric Contracting Corp.¹² (c) G & R Electrical Contracting, Inc. (d) Lesil Reliable Electric Co., Inc. (e) Lisa Electric, Inc. a/k/a YNR Electric (f) Maximum Electrical Contracting, Inc. (g) Milad Contracting Corp. (h) Modica & Reilly Electric Corp. (i) Mondl Electric Co., Inc. (j) Norlin Electrical Contracting Co. (k) Pantel Contracting Corp. (l) Positive Electric Association, Inc. (m) T & A Electrical Contracting (n) Tri-Town Electric Corp. (o) and W.T. Hickey Corp., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹² UECA claims that Farica was never represented by it in negotiations and was not on the list of individual-employer members of UECA given to Local 3. However, on October 2, 2000, Farica acknowledged, by letter, that it was bound by the 1993 certification and that it was a member of UECA and represented by it in negotiations. I accordingly find that Farica is properly subject to an Order in this case.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately furnish to the Union the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees. (b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix C"¹³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any of the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

C. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) C.B. Electrical (b) Eugene Iovine, Inc. (c) Expert Electric, Inc. (d) Falcone Electric Corp. (e) Ferrara Electrical Controls (f) Global Electrical Contracting (g) Granna Electric (h) Kew Electric Co. and (i) Star Brite Electric Corp., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying furnishing complete information, including the telephone numbers of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with complete information requested by Local 3, including the telephone numbers of unit employees.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix D."¹⁴ Copies of the notice, on forms provided by the Regional Direc-

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tor for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 14, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

D. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) Alco Electric Co. (b) Atlas Electrical Contractors, Inc. (c) Bisantz Electric Co., Inc. (d) County Wide Electric (e) DeCeck & Leonard, Inc. (f) Eaton Electric, Inc. (g) Gilston Electrical Contracting Corp. (h) J.K. Electric Corp. (i) Lipco Electric Co. (j) Lobello Electrical Installation (k) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp. (l) Paul Mock, Inc. (m) Raymour Electric Company (n) Schneider Electric Company, Inc. (o) Square Electric Co., Inc. (p) T & J Electrical Contractors (q) Tap Electrical Contractors Service, Inc. (r) V & R Electrical Contractors, Inc. (s) Vintage Electric Corp. and (t) Controneo & Marino's United Electric Co., Inc, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying furnishing complete listings of telephone numbers of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with complete listings of telephone numbers of unit employees.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix E."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respon-

dents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 14, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

E. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) Blake Electric Contracting, Inc. (b) Eaton Electric, Inc. (c) J.K. Electric Corp. (d) Mondl Electric Co., Inc. (e) Paul Mock, Inc. (f) Raymour Electric Co. (g) Schneider Electric Co. (h) Star Electric Corp. (i) Star-Brite Electric Co. and (j) T. Reilly Electric Corp. f/k/a Modica & Reilly Electric Corp, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix F."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 7, 2001

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

Action Electrical Contracting Corp.	Lobello Electrical Installation M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp.
Alco Electric Co.	Maximum Electrical Contracting Corp.
Atlas Electrical Contractors, Inc.	Milad Contracting Corp.
Bisantz Electric Co., Inc.	Mondl Electric Co., Inc.
Bran Electric Corp.	Norlin Electrical Contracting Co.
C. B. Electrical	Pantel Contracting Corp.
C & L Electric, Inc.	Paul Mock, Inc.
Cotroneo & Marino's United Electric Co., Inc.	Positive Electric Association, Inc.
County Wide Electric	Raymour Electrical Co.
DeCeck & Leonard, Inc.	Schneider Electric Co., Inc.
DiFrancia Electric, Inc.	Square Electric Co., Inc.
Eaton Electric, Inc.	Star Brite Electric Co.
Eugene Iovine, Inc.	T & A Electrical Contracting
Expert Electric, Inc.	T & J Electrical Contracting
Falcone Electric Corp.	T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
Farica Electric Contracting Corp.	Tap Electrical Contractors Service, Inc.
Ferrara Electrical Controls	Tri-Town Electric Corp.
G & R Electrical Contracting, Inc.	V & R Electrical Contractors, Inc.
Gilston Electrical Contracting Corp.	Vintage Electric Corp.
Global Electrical Contracting	W.T. Hickey Corp.
Granna Electric	
Heller Electric Co., Inc.	
Interphase Electrical Corp.	
J. K. Electric Corp.	
Kew Electric Co.	
Lesil Reliable Electric Co., Inc.	
Lipco Electric Co.	
Lisa Electric, Inc. a/k/a YNR Electric, Inc.	

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide certain information to Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, or delay furnishing other information to Local 3.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, bargain with Local 3 as the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 12 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical

Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL provide Local 3 with the requested information except such information already provided to Local 3.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish the information requested by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately furnish to the Union the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND DiFRANCIA ELECTRIC, INC., FARICA ELECTRIC CONTRACTING CORP., G & R ELECTRICAL CONTRACTING, INC., LESIL RELIABLE ELECTRIC CO., INC., LISA ELECTRIC, INC. A/K/A YNR ELECTRIC, MAXIMUM ELECTRICAL CONTRACTING, INC., MILAD CONTRACTING CORP., T. REILLY ELECTRICAL CORP., F/K/A MODICA & REILLY ELECTRIC CORP., MONDL ELECTRIC CO., INC., NORLIN ELECTRICAL CONTRACTING CO., PANTEL CONTRACTING CORP., POSITIVE ELECTRIC ASSOCIATION, INC., T & A ELECTRICAL CONTRACTING, TRI-TOWN ELECTRIC CORP., AND W.T. HICKEY CORP.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT delay furnishing complete information, including the telephone numbers of unit employees to Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with complete information, including the telephone numbers of our unit employees.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND ACTION
ELECTRICAL CONTRACTING CORP., C. B.
ELECTRICAL, EUGENE IOVINE, INC., EXPERT
ELECTRIC, INC., FALCONE ELECTRIC CORP.,
FERRARA ELECTRICAL CONTROLS, GLOBAL
ELECTRICAL CONTRACTING, GRANNA
ELECTRIC, KEW ELECTRIC CO., AND STAR
BRITE ELECTRIC CO.

APPENDIX E

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT delaying furnishing to Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, complete listings of telephone numbers of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with complete listings of telephone numbers of our unit employees.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND ALCO
ELECTRIC CO., ATLAS ELECTRICAL

CONTRACTORS, INC., BISANTZ ELECTRIC CO.,
INC., COUNTY WIDE ELECTRIC, DECECK &
LEONARD, INC., EATON ELECTRIC, INC.,
GILSTON ELECTRICAL CONTRACTING CORP.,
J. K. ELECTRIC CORP., LIPCO ELECTRIC CO.,
LOBELLO ELECTRICAL INSTALLATION, M.P.E.
ELECTRICAL CONTRACTING CORP. D/B/A STAR
ELECTRIC CORP., PAUL MOCK, INC., RAYMOUR
ELECTRIC CO., SCHNEIDER ELECTRIC CO., INC.,
SQUARE ELECTRIC CO., INC., T & J ELECTRICAL
CONTRACTORS, TAP ELECTRICAL
CONTRACTORS SERVICE, INC., V & R
ELECTRICAL CONTRACTORS, INC., VINTAGE
ELECTRIC CORP., AND COTRONEO & MARINO'S
UNITED ELECTRIC CO., INC.

APPENDIX F

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish to Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

UNITED ELECTRICAL CONTRACTORS
ASSOCIATION A/K/A UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION AND BLAKE
ELECTRIC CONTRACTING, INC., EATON
ELECTRIC, INC., J. K. ELECTRIC CORP., MONDL
ELECTRIC CO., INC., PAUL MOCK, INC.,
RAYMOUR ELECTRIC CO., SCHNEIDER ELECTRIC
CO., STAR ELECTRIC CORP., STAR BRITE
ELECTRIC CO., T. REILLY ELECTRIC CORP. F/K/A
MODICA & REILLY ELECTRIC CORP.